REMARKS

This responds to the Office Action mailed on September 24, 2007.

Claims 1, 3-5, 12, 15, 16, 18-21, 26, 28-31, 33-35, and 37-40 are amended, no claims are canceled, and no claims are added; as a result, claims 1-41 are now pending in this application. The amendments to the claims are fully supported by the specification as originally filed. No new matter is introduced. Applicant respectfully requests reconsideration of the above-identified application in view of the amendments above and the remarks that follow.

Support for the amendments may be found in the specification, for example, at page 7, line 8 – page 8, line 27.

In the Specification

The specification is amended to update the status of U.S. Application Serial No. 09/223,439, from which the instant application is a continuation application. No new matter is introduced.

The specification is amended with the paragraphs beginning on page 2, line 17 – line 26, including the heading Summary of the Invention but before the heading Brief Description of the Drawings, being deleted. The specification is amended with paragraphs inserted beginning on page 4, line 15. The inserted paragraphs are essentially from the specification as originally filed beginning on page 2, lines 18 – 26. No new matter is introduced.

Claim Objections

Claims 3, 31, and 40 were objected to. Claims 3, 31, and 40 are amended as suggested by the Examiner.

§102 Rejection of the Claims

Claims 1-2, 4-13, 15-20, 22, 24, 26, 28, 30-34, 36-38, and 40-41 were rejected under 35 U.S.C. § 102(e) for anticipation by Graf (U.S. 6,085,221). Applicant traverses these grounds of rejection of these claims.

Applicant reserves the right to swear behind Graf at a later date.

Applicant cannot find in Graf a disclosure, a teaching, or a suggestion of a system that

includes an under-run forecasting mechanism, a statistics monitoring mechanism, and a playback queuing mechanism arranged to build latency in a supply of received data packets received from a server on a network, where the system is separate from the server and the latency is based on a under-run predicted time generated at the system using the under-run forecasting mechanism and the fluctuations in arrival of data packets measured at the system using the statistics monitoring mechanism, as recited in amended claim 1. Graf relates to apparatus and methods for providing appropriate delays for playing video or audio by determining the delays prior to transmission of a file and providing the delay information with the transmitted data files. *(See Graf column 4 , line 17 -59.)* Graf's Figure 4 and column 6, lines 44 - column 7, line 25 discusses how a receiver can impose constraints on output traffic to the receiver, where the constraints are used by a video server at presentation time *(See Graf column 6 , line 35 -43)* from a pre-stored source such as a table. In Graf's Figure 4, the amount of traffic transmitted is shown as a function of time, "which is--under the assumptions made in the model of FIG. 1--equal to the total amount of traffic received up to time t, is plotted over t." *(See Graf column 6 , line 45 - 49)*, where "[t]his traffic curve only depends on the `receiver buffer overflow` curve, as the rate control always tries to keep the receiver buffer full. To be able to construct the curve it is necessary to assume in a first step that the receiver buffer is already completely filled at initialization." *(See Graf column 6, line 63 -67.)* Thus, Applicant submits that the curves of Graf's Figure 4 are constructed and that Graf does not disclose, teach, or suggest a statistics monitoring mechanism to <u>measure</u> fluctuations in arrival of data packets, from the network, to the supply of received data packets. Further, Applicant submits that Graf does not disclose, teach, or suggest all the elements of claim 1 interrelated, as recited in claim 1.

Therefore, Applicant respectfully submits that Graf does not teach each and every claim element of claim 1, that Graf does not teach the identical invention in as complete detail as is contained in claim 1, and/or that Graf does not teach each and every claim element arranged as in claim 1. Thus, Applicant submits that Graf does not anticipate claim 1 and that claim 1 is patentable over Graf for at least the reasons stated above. For at least reasons similar to those stated above with respect to claim 1, Applicant submits that amended independent claims 12, 19, and 33 are patentable over Graf. Further, Applicant submits that claims dependent from

independent claims 1, 12, 19, and 33 are patentable over Graf for at least the reasons stated herein.

Applicant respectfully requests withdrawal of these rejections of claims 1-2, 4-13, 15-20, 22, 24, 26, 28, 30-34, 36-38, and 40-41, and reconsideration and allowance of these claims.

First §103 Rejection of the Claims

Claims 3, 14, 29, and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Graf as applied to claims 1, 12, 19, and 33 above, in view of Rostoker et al. (U.S. 5,784,572). Applicant traverses these grounds of rejection of these claims.

Applicant submits that combining Rostoker et al. (hereafter Rostoker) with Graf, as proffered in the Office Action, does not cure the deficiencies of citing Graf with respect to claim 1. Therefore, for at least the reasons stated above with respect to claim 1, Applicant submits that Graf in view of Rostoker does not disclose or suggest all the features of claim 1 and that claim 1 is patentable over Graf in view of Rostoker. For at least reasons similar to those stated herein, Applicant submits that independent claims 12, 19, and 33 are patentable over Graf in view of Rostoker. Claims 3, claim 14, claim 29, and claim 39 depend from claims 1, 12, 19, and 33, respectively, and are patentable over Graf in view of Rostoker for at least the reasons stated herein.

Applicant respectfully requests withdrawal of these rejections of claims 3, 14, 29, and 39, and reconsideration and allowance of these claims.

Second §103 Rejection of the Claims

Claims 21, 23, and 27, and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Graf as applied to claims 19 and 33 above. Applicant traverses these grounds of rejection of these claims.

Claims 21, 23, and 27 and claim 35 depend from independent claims 19 and 33, respectively, and are patentable over Graf for at least the reasons stated herein with respect to claims 19 and 33.

Applicant respectfully requests withdrawal of these rejections of claims 21, 23, and 27, and 35, and reconsideration and allowance of these claims.

Third §103 Rejection of the Claims

Claim 25 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Graf as applied to claim 19 above, in view of Craft (U.S. 6,272,566 B1). Applicant traverses these grounds of rejection of this claim.

Applicant reserves the right to swear behind Craft at a later date.

Applicant submits that combining Craft with Graf, as proffered in the Office Action, does not cure the deficiencies of citing Graf with respect to claim 19 that claim 19 is patentable over Graf in view of Craft. Claim 25 depends from claim 19 and is patentable over Graf in view of Craft for at least the reasons stated herein.

Applicant respectfully requests withdrawal of these rejections of claim 25, and reconsideration and allowance of this claim.

Assertion of Pertinence

Applicant has not responded to the assertion of pertinence stated for the patents cited, but not relied upon, by the Office Action since these patents are not relied upon as part of the rejections in this Office Action. Applicant is expressly not conceding they have any pertinence and reserves the right to respond more fully should any of them form a part of some future rejection.

Reservation of Rights

Applicant does not agree with one or more comments in the instant Office Action. However, Applicant has limited the discussion of the Office Action rejections to such discussion as is necessary to efficiently expedite the prosecution of the abovementioned application. Applicant reserves the right to further address the comments of the Examiner at a later date if necessary.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 371-2157 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 26 December 2007   By _____
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 26 day of December 2007.

LISA POSORSKE

Name   Signature